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23/10/07

HIGH COURT OF CHHATTISGARH, BILASPUR

W. P (S) No.5962/2007

PETITIONER Ramakant Mishra, S/o Shri S.N. Mishra, aged about 54 years, Occupation Service, presently posted Head Constable, resident of Oppt. Purana Khilona Kharkhana, Sai Nagar, Raipur (Chhattisgarh)

Versus

RESPONDENTS

1. State of Chhattisgarh, Through the Secretary, Department of Home (Police), Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

2. Director General of Police Chhattisgarh, Police Head Quarter, Raipur.

3. Assistant Inspector General of Police (Admn-II), Office of Director General of Police Chhattisgarh, Police Head Quarter, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri Manindra Shrivastava, Sr. Advocate with Shri Amit Verma, Counsel for the petitioner.

Shri A.S. Kachhwaha, Govt. Advocate for the State on advance copy.

ORAL ORDER

(15.10.2007)

(Passed in W.P. (S) Nos. 5962/2007, 5963/2007, 5966/2007 , 5967/2007, 5972/2007, 5996/2007 & 6147/2007)

SUNIL KUMAR SINHA, J.

Heard.

The petitioner is aggrieved with the order of transfer dated 10.09.2007, by which, after repatriation to the Headquarter of the parent department, a new posting has been given to the petitioner.

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Learned Senior Counsel appearing for the petitioner argues that previously the petitioner was sent on deputation to the Transport Department and after completion of the deputation period, he was repatriated to the parent department and when the petitioner gave his joining at Police Headquarters, Raipur, he has been transferred and posted to a District, which is a naxalite affected area. He argues that there is a policy of the Government dated 01/04/2006, according to which, the transfer has to be affected. He refers to clause 7 of the Policy and submits that the policy is not reasonable and following that policy, the transfer should not have been affected. He further refers to the decision of the Apex Court rendered in the matter ***of Kendriya Vidyalalya Sangathan vs. Damodar Prasad Pandey and others, 2004 AIR SCW 5563.***

Para 4 of the aforesaid decision reads as under :

"Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (*See Ambani Kanta Ray v. State of Orissa, 1995 (Suppl.) 4 SCC (169)*. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it (*see Union of India v. S.L. Abbas, AIR 1993 SC 2444)*. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In *Union of India and Ors. V. Janardan Debanath & Anr. (2004) 4 SCC 245*, it was observed as follows :

"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency

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in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574"

After going through the contents of the Writ Petition as also the decision referred to by learned counsel for the petitioner, it is clear that transfer is an incidence of service and nobody working on a transferable post can claim for his posting at a particular place. Unless the order of transfer is vitiated by malafide or is shown to be affected by extraneous consideration or is issued against any statutory Rules or the Act, the same cannot be interfered by a Court of Law.

In the present case, learned counsel for the petitioner could not make out a case either of arbitrariness or of malafide or of extraneous consideration or that the transfer order is passed against any statutory rules or the Act, rather the Policy referred by learned counsel for the petitioner itself says that after repatriation, a person has to be posted in naxalite affected area, therefore, there does not appear to be violation of the policy also.

So far as reasonableness of the Policy is concerned, this Policy was framed as back as in the year 2006 and it was well within the dominion of the makers of the Policy to frame it. While exercising the power of judicial review, in such matters, the High Court does not sit as an Appellate Authority. It is the settled principle that the Courts are not to interfere in the matter of policy, which admittedly lies in the dominion of the makers of the same, provided these authorities do not transgress their constitutional limits or statutory powers.

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Unless the action or the decision of the Government is shown to be unconstitutional or contrary to statutory provisions, or arbitrary or irrational, or is abuse of power, or discriminatory, the same cannot be interfered by the High Court under writ jurisdiction under Article 226 of the Constitution of India.

In the present case, the matter relates to police force. What should be the best policy for posting of the police force to meet the need of the people at large or to serve the exigency of service is the exclusive dominion of the department itself. The department has always a choice in balancing pros and cons relating to the policy.

Learned counsel for the petitioner could not make out a case that either the policy was framed by transgressing any specific provision or is arbitrary or malafide, therefore, the arguments on the ground of reasonableness of the policy, in the facts and circumstances of this case, cannot be entertained.

I do not find any reason to interfere with the order of transfer.

The petition has no merit and the same is accordingly dismissed.

Sd/-
Sunil Kumar Sinha
Judge

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